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Paper No. 5

**BROBECK, PHLEGER & HARRISON, LLP**  
**12390 EL CAMINO REAL**  
**SAN DIEGO, CA 92130**

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In re Application of  
Link et al.

Application No. 09/853,337

Filed: May 10, 2001

Attorney Docket No. 031926.0009.UTL

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed May 11, 2004, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to reply in a timely manner to the restriction requirement mailed December 30, 2002, which set a shortened statutory period for reply of one (1) month. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on January 31, 2003. A Notice of Abandonment was mailed on September 10, 2003.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply,
- (2) the petition fee,
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
- (4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

Where there is a question as to whether either the abandonment or the delay in filing a petition<sup>2</sup> under 37 CFR 1.137 was unintentional, the Commissioner may require additional information.

<sup>1</sup> In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

<sup>2</sup> See MPEP 711.03(c)(III)(C) and (D).

The instant petition lacks item (1). Petitioner failed to include the proper response to the Office action mailed on December 30, 2002. To revive the above-identified application, petitioner must submit a response. A copy of the Office action is enclosed for petitioner's convenience.

The instant petition appears to be on the behalf of the assignee. However, the petition does not comply with 37 CFR 3.73(b). 37 CFR 3.73(b) provides that: (1) when an assignee seeks to take action in a matter before the Office, the assignee must establish its ownership of the property to the satisfaction of the Commissioner; (2) ownership is established by submitting to the Office, in the Office file related to the matter in which action is sought to be taken, documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment submitted for recording) or by specifying (*e.g.*, reel and frame number) where such evidence is recorded in the Office; (3) the submission establishing ownership must be signed by a party authorized to act on behalf of the assignee; and (4) documents submitted to establish ownership may be required to be recorded as a condition to permitting the assignee to take action in a matter pending before the Office. A 37 CFR 3.73(b) statement is enclosed.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a request to change the address of record should be filed. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Further correspondence with respect to this matter should be addressed as follows:

**By mail:** Mail Stop PETITION  
Commissioner for Patents  
Post Office Box 1450  
Alexandria, VA 22313-1450

**Effective December 1, 2003, the Office of Petitions can no longer receive hand-carried correspondence, or facsimile transmissions of correspondence. The centralized location for hand-carried correspondence is the existing Customer Window located at:**

2011 South Clark Place  
Crystal Plaza 1 Lobby  
Room 1B03  
Arlington, VA 22202

The centralized facsimile number is (703) 872-9306.

Telephone inquiries should be directed to the undersigned at (703) 306-0482.



Liana Chase  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

Enclosure: Restriction (Previously mailed on December 30, 2002)  
Statement under 3.73(b) (PTO/SB/96)

CC: GAYLE R. LINK  
3162 JOHNSON FERRY ROAD, SUITE 260-624  
MARIETTA, GA 30062

**STATEMENT UNDER 37 CFR 3.73(b)**

Applicant/Patent Owner: \_\_\_\_\_

Application No./Patent No.: \_\_\_\_\_ Filed/Issue Date: \_\_\_\_\_

Entitled: \_\_\_\_\_

\_\_\_\_\_, a \_\_\_\_\_  
(Name of Assignee) (Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1. ☐ the assignee of the entire right, title, and interest; or2. ☐ an assignee of less than the entire right, title and interest.  
The extent (by percentage) of its ownership interest is \_\_\_\_\_ %  
in the patent application/patent identified above by virtue of either:A. ☐ An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.

OR

B. ☐ A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as shown below:1. From: \_\_\_\_\_ To: \_\_\_\_\_  
The document was recorded in the United States Patent and Trademark Office at Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.2. From: \_\_\_\_\_ To: \_\_\_\_\_  
The document was recorded in the United States Patent and Trademark Office at Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.3. From: \_\_\_\_\_ To: \_\_\_\_\_  
The document was recorded in the United States Patent and Trademark Office at Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.☐ Additional documents in the chain of title are listed on a supplemental sheet.☐ Copies of assignments or other documents in the chain of title are attached.

[NOTE: A separate copy (i.e., the original assignment document or a true copy of the original document) must be submitted to Assignment Division in accordance with 37 CFR Part 3, if the assignment is to be recorded in the records of the USPTO. See MPEP 302.08]

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

\_\_\_\_\_  
Date\_\_\_\_\_  
Typed or printed name\_\_\_\_\_  
Telephone number\_\_\_\_\_  
Signature\_\_\_\_\_  
Title

This collection of information is required by 37 CFR 3.73(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,337	05/10/2001	Gayle R. Link	031926.0009.UTL	7377

23865 7590 12/30/2002

BROBECK, PHLEGER & HARRISON LLP  
12390 EL CAMINO REAL  
SAN DIEGO, CA 92130

EXAMINER

KIANNI, KAVEH C

ART UNIT

PAPER NUMBER

2877

DATE MAILED: 12/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/853,337

Applicant(s)

LINK ET AL.

Examiner

Kevin C Kianni

Art Unit

2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) 1-57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-57 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claim 1, for group I claims 1-37, drawn to an optical router in which a plurality of channel combiners, one channel combiner of the plurality of channel combiners per multiplexing unit of the plurality of multiplexing units, each channel combiner of the plurality of channel combiners being coupled to a different one of the outputs of the plurality of outputs of the first spatial switching fabric, said each channel combiner being capable of receiving and multiplexing channels received from the corresponding output of the plurality of outputs of the first spatial switching fabric and the channels multiplexed by the multiplexing unit associated with said each channel combiner, classified in class 359, subclass 152.
  - II. Claim 38, for group II claims 38-42, drawn to an optical router in which, a plurality of multiplexing units, one multiplexing unit of the plurality of multiplexing units per bundle, each multiplexing unit of the plurality of multiplexing units being coupled to a respective output of the plurality of outputs of the first spatial switching fabric, said each multiplexing unit of the plurality of multiplexing units being capable of multiplexing at least a subset of channels of the bundle associated with said each multiplexing

unit, the add wavelength channel converted by the converter associated with the bundle that is associated with said each multiplexing unit, and channels received from the respective output of the plurality of outputs of the first spatial switching fabric, classified in class 359, subclass 154.

III. Claim 43, for group III claims 43-45, drawn to an optical router in which a first channel combiner coupled to the first output of the plurality of outputs of the first spatial switching fabric and to the first wavelength conversion module, the first channel combiner being capable of receiving and multiplexing wavelength channels from the first output of the first spatial switching fabric and the channels multiplexed by the first multiplexing unit; and a second channel combiner coupled to the second output of the plurality of outputs of the first spatial switching fabric and to the second wavelength conversion module, the second channel combiner being capable of receiving and multiplexing wavelength channels from the second output of the first spatial switching fabric and the channels multiplexed by the second multiplexing unit, classified in class 359, subclass 157.

IV. Claim 46, for group IV claims 46-57, drawn to an optical router that uses optical fibers as means for first and second wavelength selection, first and

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second wavelength multiplexing, first spatial switching, and first and second channel combining for combining wavelength channels appearing at the first/second output of the first/second spatial switching means and the wavelength channels multiplexed by the first/second wavelength multiplexing means, classified in class 385, subclass 24.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions Group I, II, III claims and Group IV claims are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case Group IV invention can be used as in optical interference filters as optical add/drop WDM rather than using wavelength channel filters used in SONET/SDH network for routing data.
3. Because these inventions are distinct for the reasons given above and the search required for Group IV is not required for Groups I, II and III restriction for examination purposes as indicated is proper.
4. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).
5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one



or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin C Kianni whose telephone number is (703) 308-1216. The examiner can normally be reached on 9:30-18.00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank Font can be reached on (703) 308-4881. The fax phone numbers for the organization where this application or proceeding is assigned are (703)308-5401 for regular communications and (703) 308-5401 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 305-4770.

Kevin C Kianni  
Examiner: Kianni  
Art Unit 2877

Kevin Cyrus Kianni  
Patent Examiner  
Group Art Unit 2877

December 27, 2002

Frank Font  
Supervisory Patent Examiner  
Group Art Unit 2877

  
Michael P. Staffira  
Primary Patent Examiner  
Technology Center 2800